

REMARKS

Reconsideration and allowance of the above-referenced application are respectfully requested.

I. STATUS OF THE CLAIMS

Claim 20 is amended herein. Applicants' presume that claims 1-19 are allowed since there is no prior art rejection directed to these claims.

In view of the above, it is respectfully submitted that claims 1-20 are currently pending and under consideration.

II. DOUBLE PATENTING

On page 2 of the Office Action, the Examiner indicates that claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 22 of copending Application No. 10/807,285.

With regard to claims 1-20 of the instant application, it is believed that any submission of a Terminal Disclaimer or arguments as to the non-obvious nature of the claims would be premature since copending Application No. 10/807,285 has not yet been issued as a patent and since all of the claims of the instant application have not yet been indicated as allowable except for the provisional rejection. MPEP § 804(I)(B). As such, it is respectfully requested that the Applicants be allowed to address any obviousness-type double patenting issues remaining once the rejection of the claims is resolved or on allowance of copending Application No. 10/807,285.

III. REJECTION OF CLAIM 20 UNDER 35 U.S.C. § 102(B) AS BEING ANTICIPATED BY HAGERTY (US 713,301)

Claim 20 (as amended herein) teaches a variable capacity rotary compressor, which comprises "a locking part provided at a predetermined position of the first and second eccentric bushes to be locked by the restraining unit when the restraining unit is outwardly projected from the rotating shaft."

Hagerty teaches a rotary engine, but fails to teach or suggest the claimed locking part recited in claim 20 of the present invention.

In view of the above, it is respectfully submitted that the rejection is overcome.

IV. CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that each of the claims patentably distinguishes over the prior art, and therefore defines allowable subject matter. A prompt and favorable reconsideration of the rejection along with an indication of allowability of all pending claims are therefore respectfully requested.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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